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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
HENRY MAURICE HUNTER, )  
 )  
Defendant. )

No. CR-07-0750 CW

GOVERNMENT'S SENTENCING  
MEMORANDUM

**Sentencing Date: March 5, 2008, 2:00  
p.m., The Honorable Claudia Wilken**

The United States of America requests that Defendant Henry Maurice Hunter be sentenced to 15 months imprisonment, the low end of the United States Sentencing Guidelines ("Guidelines") range, and three years of supervised release, consistent with the Plea Agreement and the recommendation of the United States Probation Office ("USPO").

**INTRODUCTION**

After failing to report to the Cornell Corrections halfway house to complete his prison sentence, on December 5, 2007, Defendant pled guilty to a single-count information alleging that he illegally escaped from the custody of the Attorney General

1 and his authorized representative in violation of Title 18, United States Code, Sections  
 2 751(a) and 4082. This conduct represents the most recent example of Defendant's  
 3 repeated violations of both his custodial and supervised release conditions over the past  
 4 17 years. Since 1991, Defendant has violated his state parole and been returned to prison  
 5 on at least three occasions; Defendant's state probation has been revoked at least three  
 6 times and modified on at least one additional occasion; and, finally, Defendant's federal  
 7 supervised release has been revoked two times. Indeed, the instant offense arises from  
 8 Defendant's escape from a ten-month prison term he was serving following the most  
 9 recent revocation of his supervised release. Given Defendant's inability to comply with  
 10 the terms of his confinement or the terms of his supervised release, a sentence of 15  
 11 months imprisonment is necessary to protect the public from further crimes of Defendant,  
 12 to afford adequate deterrence to Defendant's criminal conduct, and to promote respect for  
 13 the law.

#### 14 FACTUAL BACKGROUND

15 The Presentence Investigation Report ("PSR") adequately sets forth the criminal  
 16 activity. Consequently, the United States will not repeat the information in this section.

#### 17 ARGUMENT

#### 18 **I. PURSUANT TO THE SENTENCING GUIDELINES, DEFENDANT** 19 **SHOULD BE SENTENCED TO 15 MONTHS IMPRISONMENT AND** **THREE YEARS OF SUPERVISED RELEASE.**

20 The United States agrees with the Guidelines calculations set forth in the PSR  
 21 resulting in a total offense level of 7 and a criminal history category of VI. PSR ¶¶ 25,  
 22 40-42. Pursuant to the Plea Agreement in this matter, the United States recommends a  
 23 sentence of 15 months imprisonment.

#### 24 **II. APPLICATION OF THE FACTORS IN 18 U.S.C. § 3553(a)** 25 **DEMONSTRATES THAT A SENTENCE OF 15 MONTHS** 26 **IMPRISONMENT AND THREE YEARS OF SUPERVISED RELEASE IS** **REASONABLE.**

27 The Supreme Court recently noted that the "Guidelines . . . seek to embody the §  
 28 3553(a) considerations, both in principle and in practice." Rita v. United States, 127 S.  
 Ct. 2456, 2464 (2007). These factors or considerations include the need for the sentence

1 to promote respect for the law, afford adequate deterrence, protect the public from further  
2 criminal conduct by the defendant, and provide the defendant with needed training and  
3 medical care. 18 U.S.C. § 3553(a). The sentence recommended by the government and  
4 the USPO in the PSR achieves all of these sentencing goals. A sentence of 15 months  
5 imprisonment, three-years supervised release, and a \$100 special assessment is reasonable  
6 and appropriate.

7       **A.     A Sentence Of 15 Months Imprisonment Is Necessary To Protect The**  
8               **Public, Afford Adequate Deterrence, And To Promote Respect For The**  
9               **Law.**

10       Defendant has been in custody or on some form of monitored release for almost all  
11 of the past 19 years. (PSR ¶¶ 27-39.) Stated differently, but for possibly a few months in  
12 2000 and 2001, Defendant has been serving some form of a criminal justice sentence -  
13 either in custody or on supervised release - for his entire adult life. (Id.) He has been  
14 convicted of at least ten separate crimes in both state and federal courts, including the  
15 armed robbery of a pizza parlor in 1994 for which he was sentenced to six years in prison.  
16 (Id.) Defendant's state parole has been revoked at least three times; his state probation  
17 has been revoked at least three times and modified at least once; and, his federal  
18 supervised release has been revoked two times. (Id.)

19       In addition to Defendant's criminal convictions, which put him into criminal  
20 history category VI in this case, Defendant has been arrested for a number of violent  
21 crimes. For example, in 1991, Defendant was arrested for robbing a pizza delivery person  
22 at gunpoint. (PSR ¶ 43.) The charges were apparently dismissed, however, when  
23 Defendant agreed to plead guilty to the separate armed robbery of a different pizza parlor.  
24 (Id.) Additionally, in 1992, Defendant was arrested for beating a woman and pointing a  
25 gun at her at a gas station. (PSR ¶ 44.) And, in 1998, Defendant was arrested for beating  
26 his girlfriend with an iron during a fight. (PSR ¶ 45.)

27       Given Defendant's lengthy criminal history and inability to comply with the terms  
28 of his supervision, either in custody or out-of-custody, a sentence of 15 months is

reasonable and necessary to protect the public, afford adequate deterrence, and to promote respect for the law.

**B. A Sentence Of 15 Months Imprisonment May Provide Defendant With Necessary Training And Medical Care.**

Defendant admits to a long history of substance abuse. (PSR ¶¶ 61-65). Defendant's extensive criminal history is apparently due, in part, to his drug abuse. For example, Defendant was convicted of a felony cocaine sales violation in 1991. (PSR ¶ 33.) Moreover, Defendant claims that he participated in an armed robbery of a pizza parlor in 1992 in order to purchase drugs. (PSR ¶ 36.) Additionally, Defendant's supervised release was revoked in April 2005 after he tested positive for narcotics on four occasions, failed to appear for narcotics testing on three occasions, and failed to appear for counseling on two occasions. (PSR ¶ 38.) His supervised release was revoked again in November 2006 after he tested positive on three occasions for cocaine and failed to appear for a drug test. (PSR ¶ 38.) Further, according to defense counsel, the instant offense is "a drug relapse. . . . Mr. Hunter is a long-time drug addict." (Letter from defense counsel to USPO dated February 1, 2008.)

Despite his admitted substance abuse problem, Defendant has failed to complete necessary treatment while out of custody. Defendant failed to reside at a residential drug treatment facility, leading, in part, to the revocation of his supervised release in April 2005. (PSR ¶¶ 38, 64.) Therefore, a sentence of 15 months imprisonment and three years of supervised release may provide Defendant with the resources to address his substance abuse problem.

**III. THE SEARCH CONDITION IN THE PSR SHOULD BE MODIFIED.**

On page 3 of the "Sentencing Recommendation" attached to the PSR, the Probation Officer suggests that Defendant, while on supervised release, shall submit to a search by a Probation Officer based on "reasonable suspicion." (PSR, Additional Condition 3.) Considering Defendant's lengthy criminal history, and in light of the recent Ninth Circuit decision in United States v. Betts, 511 F.3d 872 (9<sup>th</sup> Cir. 2007), the search

1 clause applicable during Defendant's term of supervised release should be expanded.  
2 Specifically, the government submits that this condition should read as follows:

3 The defendant shall submit his person, residence, office, vehicle, or any property  
4 under his control to a search at any time by any law enforcement officer or any  
probation officer with or without a warrant and with or without cause.

5 In Betts, the Ninth Circuit upheld a substantially similar search clause, even  
6 though the defendant in that case had no criminal history. In doing so, the Ninth Circuit  
7 relied on Samson v. California, 126 S.Ct. 2193 (2006), which held that a similarly worded  
8 condition imposed upon all parolees in California did not violate the Fourth Amendment  
9 even though the condition did not require reasonable suspicion. Betts, 511 F.3d at 876  
10 (citing Samson, 126 S.Ct. at 2202). The Ninth Circuit noted that in Samson, the Supreme  
11 Court had considered the high risk of recidivism for people convicted of crimes and  
12 reasoned that a reasonable suspicion requirement would give parolees greater opportunity  
13 to anticipate searches and hide criminal conduct. Id. Because there was "no sound  
14 reason for distinguishing parole from supervised release" with respect to this condition,  
15 and noting that the Court in Samson even drew the analogy to supervised release, the  
16 Ninth Circuit determined that the expansive search condition not requiring reasonable  
17 suspicion was appropriate. Id. At least one other circuit has agreed with the Ninth  
18 Circuit in this regard and approved suspicionless searches as a condition of supervised  
19 release. United States v. Hanrahan, 508 F.3d 962, 971 (10<sup>th</sup> Cir. 2007) (approving  
20 suspicionless search condition for defendant convicted of unlawful possession of a  
21 firearm) (citing United States v. White, 244 F.3d 1199, 1208 (10<sup>th</sup> Cir. 2001) (approving  
22 suspicionless search condition for defendant convicted of possession of child  
23 pornography)).

24 Such a condition is appropriate here as well. As set forth above, Defendant's  
25 criminal history is lengthy and constant. While serving the supervised release portion of  
26 his sentence, no law enforcement officer should need reasonable suspicion to search  
27 Defendant.

28 ///

**CONCLUSION**

For the foregoing reasons, the United States respectfully requests that the Court accept the parties' Plea Agreement and the recommendation contained in the PSR, and determine that Defendant's Guidelines offense level is 7 and his criminal history category is VI. The United States further respectfully requests that, taking into consideration the sentencing factors set forth in section 3553(a), the Court sentence Defendant to the low-end of the applicable Guidelines range, namely, 15 months imprisonment, impose a three-year term of supervised release (under the terms and conditions recommended by the USPO), and order Defendant to pay a \$100 special assessment.

DATED: February 29, 2008

Respectfully submitted,

JOSEPH P. RUSSONIELLO  
United States Attorney

/s/  
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JAMES C. MANN  
Assistant United States Attorney